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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DR. GERALD FINKEL, as Chairman of the
Joint Industry Board of the Electrical Industry,

ORDER

11-CV-1697 (NGG) (RLM)

Plaintiff,

-against-

SMC ELECTRICAL CONTRACTING, INC.
and WALTER GERASIMOWICZ,

Defendants.

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NICHOLAS G. GARAUFIS, United States District Judge.

On September 23, 2011, Plaintiff moved for default judgment against Defendants for alleged violations of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1104 et seq. and the Labor Management Relations Act, as amended, 29 U.S.C. § 185 et seq. (Pl. Mot. (Dkt. 10).) On November 18, 2011, the court referred this motion to Magistrate Judge Robert M. Levy for a Report and Recommendation (“R&R”) pursuant to 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b)(1). (Nov. 18, 2011, Order.)

Subsequent to his motion for default judgment, Plaintiff informed the court that Defendant SMC Electrical Contracting, Inc. (“SMC”), had filed for bankruptcy and requested that all claims against SMC be stayed pursuant to 11 U.S.C. § 362. (June 29, 2012, Status Report (Dkt. 30).)

On September 11, 2012, the court withdrew its previous referral to Judge Levy and (1) given the bankruptcy filing, stayed all claims against SMC; (2) granted Plaintiff’s motion for default judgment against Defendant Walter Gerasimowicz pursuant to Federal Rule of Civil Procedure 55(b)(2); and (3) referred Plaintiff’s claim for damages, interest, attorney’s fees, and costs against Gerasimowicz to Judge Levy for an R&R pursuant to 28 U.S.C. § 636(b)(1)(B). (Sept. 11, 2012, Order (Dkt. 31)).

On July 22, 2013, Judge Levy issued his R&R, recommending that Plaintiff be awarded a total of \$671,871.14 in damages—\$165,546.77 due under a stipulation previously entered into by Gerasimowicz; \$35,960.65 in interest on this unpaid amount due under the stipulation; \$218,117.39 in unpaid contributions; \$247,718.86 in liquidated damages; \$3,789.50 in attorneys' fees; and \$737.94 in costs—plus per diem interest of \$43.18 beginning on September 17, 2011, and accruing through the date of entry of judgment. (R&R (Dkt. 34).)

No party has objected to Judge Levy's R&R, and the time to do so has passed. See Fed. R. Civ. P. 72(b)(2). (See also R&R at 13 ("Any objections to this Report and Recommendation must be filed with the Clerk of Court, with courtesy copies to Judge Garaufis and my chambers, within fourteen (14) days. Failure to file objections within the specified time waives the right to appeal the district court's order.")) Therefore, the court reviews the R&R for clear error. See Gesualdi v. Mack Excavation & Trailer Serv., Inc., No. 09-CV-2502 (KAM) (JO), 2010 WL 985294, at *1 (E.D.N.Y. Mar. 15, 2010); La Torres v. Walker, 216 F. Supp. 2d 157, 159 (S.D.N.Y. 2000); cf. 28 U.S.C. § 636(b)(1). Finding no clear error, the court ADOPTS the R&R in its entirety. See Porter v. Potter, 219 F. App'x 112 (2d Cir. 2007).

Accordingly, having already granted Plaintiff's motion for default judgment against Gerasimowicz, Plaintiff is awarded \$671,871.14 in damages plus per diem interest of \$43.18 beginning on September 17, 2011, and accruing through the date of entry of judgment against this Defendant. The Clerk of Court is respectfully directed to enter judgment.

By September 13, 2013, Plaintiff shall inform the court whether he will pursue his claims against SMC. If not, he shall file a stipulation of discontinuance as soon as is practicable.

SO ORDERED.

Dated: Brooklyn, New York
August 9, 2013

s/Nicholas G. Garaufis
NICHOLAS G. GARAUFIS U
United States District Judge